charge for converters needed to receive must-carry stations, clearly distinguished between equipment used to receive basic service and equipment used to receive non-basic (cable programming) service.[171]

Accordingly, the Commission should clarify that the capacity for cable equipment to receive non-basic and pay as well as basic programming cannot determine how it is regulated. Rather, the service level of the subscriber using particular equipment should determine its level of regulatory scrutiny. Thus, only equipment used solely to receive basic service should be subject to pricing based on actual cost. If equipment (such as a remote control) is not even offered to a basic-only subscriber, then it obviously cannot be deemed "used to receive basic service" and thus would not need to be priced based on actual cost. Rates or charges for equipment used by subscribers to receive cable programming services should be analyzed under Section 623(c), concerning unreasonable cable programming service rates. Equipment used for services that are neither basic nor cable programming services (i.e., "per-channel," "per-program," or "pay" services), should

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[171]See Cablevision, Inc. (Alma, Mich.), 48 RR 2d 1401 (1981) (cable operator repositioning of must carry channel "to a second tier cable channel" requiring a converter for reception violated must carry rules); Clear Television Cable Corp. (Berkley Twp., N.J.), 46 FCC 2d 744, 30 RR 2d 57 (1974); Columbia Television Company, Inc. (Pendleton, Or.), 42 FCC 2d 674, 28 RR 2d 424 (1973).

not be subject to any rate regulation, because such services are themselves exempt from rate regulation.[172]

Similarly, if the same equipment (such as a remote control) that is offered to basic subscribers is also offered to and used by subscribers to receive higher levels of service, the equipment rate charged to the non-basic subscribers should be subject to non-basic rate standards contained in Section 623(c), or no regulation at all, depending on whether cable programming services or pay services were being subscribed to. For example, if the subscriber needs an addressable box to descramble tier service, the Section 623(c) rate regulation standard for cable programming services would apply. If, however, the subscriber uses the addressable box only to receive a pay programming tier, the device would not be subject to any rate regulation. Unless this distinction is maintained as to equipment common to different levels of service, Congressional intent would be thwarted.[173]

A simple analogy is illustrative here. When a subscriber selects an expanded service package from the cable operator, the subscriber will also receive the basic service level. This fact,

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[172]See 47 U.S.C. § 543(l)(2) (definition of "cable programming service" excludes "video programming carried on a per channel or per program basis").

[173]In requiring that basic rates be "low," Congress has apparently anticipated that revenues from equipment used to receive non-basic or pay services might be used to subsidize rates for equipment used to receive basic service. See Conf. Report at 63.

however, does not require the entire service package to be regulated under the basic rate formula -- only the basic level is subject to basic rate regulation.[174] Likewise, the fact that equipment provided to subscribers to receive cable programming service or pay services also contains the capability of delivering basic service does not mean that the equipment is subject to the actual cost test applied to basic service equipment. Cable operators and other equipment marketers should remain free to offer equipment that, for reasons of technical superiority, consumer friendliness, or otherwise, combines the capacity to receive different types of programming, without the heavy hand of "actual cost" regulation hanging above.

In addition to the foregoing legal arguments, there are technical reasons which support the above-listed distinctions between equipment used to receive basic service and equipment used to receive cable programming service. Basic service is almost universally offered on an unscrambled basis, thereby allowing access to that tier without the need for any terminal equipment, except in cases where the basic tier extends beyond the VHF band and a subscriber does not have a cable-ready set. In these limited cases, the converters provided to basic subscribers are relatively inexpensive, non-addressable boxes which are nothing more than extended tuners and are similar to

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[174] See id. at § 543(b)(1). In fact, the Commission concludes in the Notice that the 1992 Cable Act's definition of "basic service" contemplates only a single tier. Notice at ¶ 13.

the tuners which are built into so-called cable-ready sets. Accordingly, such equipment falls within Section 623(b)(3).

In contrast, addressable and programmable descramblers which are used to receive cable programming services, premium services and pay-per-view services provide sophisticated electronic technology and signal security features, such as descrambling, channel mapping, etc., which go beyond the simple tuner extension function of those converters which, in a few instances, may be used exclusively in connection with the receipt of basic service. Although the basic services may pass through addressable and programmable units along with cable and premium services, this is merely a consumer-friendly convenience which avoids the need of providing an A/B switch and, in some cases, a second set top box. Such basic services do not utilize or require the sophisticated descrambling/addressability features which are often incorporated into the devices which are used to provide tiers of cable service over and above the basic service. In short, an addressable box is not "used by subscribers to receive the basic service tier" in any situation where the basic service channels are not scrambled.[175]

Accordingly, the equipment price charged to basic-only subscribers can and should be distinguished from the equipment price charged to non-basic or pay subscribers who receive cable programming or pay programming services in addition to basic

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[175]47 U.S.C. § 543(b)(3).

service, even where the same equipment can perform all three functions. Specifically, the addressable converter is to be reviewed under either the "bad actor" standard for cable programming services[176] or completely deregulated, depending on whether cable programming services or pay programming services are being scrambled.

2. Equipment Rates Should Be Deregulated If Competition From Independent Suppliers Exists.

The 1992 Cable Act expresses an overriding preference for competition over regulation.[177] Indeed, the statute includes an appropriate test to measure effective competition as to the service components of a cable operator's offerings.[178] However, the 1992 Cable Act's definition of "effective competition" is limited to the service components only, and fails to address equipment, installation, and AOs.[179] Thus, since the 1992 Cable Act contains no parallel test regarding equipment, the Commission is free to adopt such a test. Furthermore, the FCC is required to minimize the burdens on the agency, cable operators, franchising authorities, and subscribers in developing a basic rate regulation framework.[180] Establishing a standard by which

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[176]Id. at § 543(c).

[177]See Pub. L. No. 102-385, 106 Stat. 1460, § 2(b)(2); 47 U.S.C. § 543(a)(2).

[178]47 U.S.C. § 543(l).

[179]See id. at § 543(l)(1).

[180]Id. at § 543(b)(2)(A).

rates for basic equipment can be totally deregulated is wholly consistent with this requirement. Additionally, deregulation of rates for equipment installations, and AOs in such instances would further the policy of the 1992 Cable Act to "rely on the marketplace, to the maximum extent feasible."[181] Continuing to regulate such services and equipment in the face of competition, on the other hand, would violate this stated policy.

In establishing an "effective competition test" for equipment, the Commission should keep in mind the statute's requirement that the Commission "promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes."[182] Thus, the test adopted by the Commission should be consistent with the goals of Section 17 of the 1992 Cable Act. Specifically, if the cable operator certifies that a particular piece of equipment is available for sale or lease from third party sources, and has so advised its subscribers, the price for that equipment should be deregulated.[183] Not only would such a test be wholly consistent with Congressional intent as explained above, it would also be fully consistent with the certification

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[181]Pub. L. No. 102-385, 106 Stat. 1460, § 2(b)(1), (2).

[182]47 U.S.C. § 544A(b)(2)(C).

[183]Obviously, a cable operator making such a certification regarding remote control equipment would be precluded from taking actions to disable commercially available remote control units.

procedures in the 1992 Cable Act's basic rate regulation provisions.[184]

3. Rate Setting Issues.

The 1992 Cable Act and the questions raised in the Notice lead to various rate setting issues regarding equipment, including the meaning of "on the basis of actual cost," the ability of cable operators to bundle rates for equipment and installations while keeping them separate from cable service, and the regulation of rates for additional outlets. First, as was partially explained in footnote 161, supra, evaluating the pricing of cable equipment "on the basis of actual cost" does not literally mean "at actual cost." Congress specifically provided for cable operators to earn a reasonable profit. Congress also specified that, in providing for the regulation of rates for the installation and lease of the equipment necessary for subscribers to receive basic service, "[t]he term 'actual cost' is intended to include such normal business costs as depreciation and service."[185] Moreover, the Commission correctly expresses concern that cable rates not be confiscatory, i.e., regulated at a price so low that cable operators cannot even cover their costs.[186] Accordingly, rates for the installation and lease of basic equipment must account for the following: installation,

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[184]See 47 U.S.C. § 543(a)(2)-(4).

[185]House Report at 83.

[186]See Notice at nn. 66, 79; 138 Cong. Rec. S14583 (Sept. 22, 1992) (statement of Sen. Lieberman).

amortization, maintenance, financing, general administrative overhead, plus a reasonable profit. These are the basic costs associated with providing basic equipment and AOs, and thus were fully intended by Congress to be included in the basic equipment rate.

The Commission "tentatively conclude[s] that Congress intended to separate rates for equipment and installations from other basic tier rates."[187] While the separate tests established for the service and equipment components of basic service might suggest an effort to unbundle service from equipment, neither the 1992 Cable Act nor its legislative history, however, evidence an intent to prohibit "bundling" in any form of various equipment components. Thus, for example, the FCC should not prohibit a bundled rate for converters and remotes provided to subscribers. These two pieces of equipment are really two parts of one functional unit. The converter receives the signals from the cable system and delivers them to the television set, while the remote permits the subscriber to access the television set to select among such signals. The remote sends an infrared signal which must be received and processed by the converter. One piece will not work without the other. Moreover, viewed separately, the price for remotes might be relatively low (e.g., fifteen to twenty five dollars), while the converter price can be relatively high (e.g., $110-$150). The only sensible way to account for

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[187]Notice at ¶ 63.

both the wide price difference between converters and remotes and the fact that they form a single functional equipment unit is to permit bundling of the equipment rate. Such rate, moreover, needs to reflect the short useful life, rapid obsolescence, and high rate of churn associated with such equipment as well as converters which are not returned, stolen, damaged or destroyed, and associated repair costs.

Installation is another area where the Notice raises several important issues. The Commission recognizes in the Notice that "[m]any operators charge less than actual costs for service installation as part of their marketing efforts."[188] In fact, this is almost always the case. Installations are extremely costly, requiring considerable labor and "truck rolling," in addition to the cost of the wiring, equipment, etc. used in the installation. Moreover, subscribers almost never pay disconnect fees, even if they cancel after only a short period. Similarly, cable operators rarely charge for subsequent service calls, even when the subscriber is not at home for the appointment. It would contravene Congressional intent to preclude this flexibility for cable operators, which, as the Notice recognizes, can result in increased cable penetration.[189] Such flexibility, therefore, should continue to include the unrestricted ability of cable

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[188] Id. at ¶ 70.

[189] Id.

operators to offer promotional discounts on installations as a mechanism to increase subscribership.

Accordingly, cable operators should be allowed to establish hourly installation rates to account for unique circumstances, including local labor costs, etc., which can vary widely. In the Notice, "[t]he Commission recognizes that costs for installation will vary depending on whether the dwelling has inside cabling already. It may thus be more reasonable to require two installation rates, one for previously wired dwellings and one rate for inside cabling."[190] To account for such differences, installation rates should be subject to a reasonableness standard, whereby the rate would be deemed reasonable if no greater than the hourly installation rate charged by the local telco that provides service in the area. Such a standard should provide an adequate check against unreasonable installation rates, given that telephone installations require comparable trucks, equipment, skill levels, etc. However, a surcharge should be permitted if extraordinary equipment or other costs are required for a particular installation.

Moreover, as is the case with converters and remotes, installation rates should also be deregulated if the cable operator's installation service is subject to "effective competition." Thus, cable installation should be deemed subject to effective competition, and thus rate deregulated, if the

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[190] Id. at ¶ 69 (footnote omitted).

operator allows subscribers to choose one of the following two options:

(1) payment of the full cost of installation up front, subscriber ownership of internal wiring, subscriber thereafter responsible for full cost of maintenance; or

(2) installation provided below cost, cable operator agrees to maintain inside wiring for a monthly charge no greater than twenty five percent of the basic service rate.

The Notice also asks whether there should be a surcharge over the normal installation rate when the distance between a customer's premises and the operator's distribution plant is substantial.[191] Such situations are encountered frequently in the cable industry and fall into two general categories. One general category arises in situations where the cable operator's activated plant does not "pass" one or more homes within the franchise territory. Such situations are typically dealt with through a "line extension policy" whereby such subscribers might be required to advance a grant in aid of construction before service is provided. The other general category arises where the cable plant passes a given home, but the home is set back an abnormal distance from the street. In such cases, a "non-standard" installation rate is typically assessed over and above the standard fee. Nashoba's proposal that installation rates be deemed reasonable so long as they do not exceed the hourly rate

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[191] Id.

allowed for the local telco would ameliorate at least the "non-standard" installation problem. But there is no reason why cable operators should not continue to be allowed to follow written line extension or non-standard installation policies, particularly if set forth in the franchise contract. Such an approach would be consistent with the "grandfathering" concept embodied in Section 623(j).

The Notice correctly recognizes that Congress intended to treat additional outlets the same as other equipment, "conclud[ing] that cable operators should use the same cost methodology they use for installation of other equipment to calculate the rates for installation of connections for additional receivers."[192] Installation and maintenance of AOs is essentially similar to installation and maintenance of the initial subscriber drop, but it requires additional equipment and labor to connect AOs once the initial connection to the home is made. Moreover, the Commission has placed the responsibility on the cable operator to prevent signal leakage which may emanate from a subscriber's internal wiring leading to the AOs. Accordingly, installation and maintenance of basic AOs should be regulated the same as the initial drop, as discussed above. First, the cable operator should be allowed to establish a reasonable hourly rate not exceeding that of the local telco. Again, promotional discounts should be permitted. Second, the

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[192] Id. at ¶ 71 (footnote omitted).

installation and maintenance of AOs should be deemed subject to effective competition where the cable operator offers subscribers the two options discussed above regarding the responsibility to pay full maintenance costs for internal wiring or a service contract approach.

As is evident from its title, Section 623(b)(3) only addresses the equipment component of AOs (i.e., installation and monthly maintenance). This subsection does not address the service component of AOs, which comprises a much greater portion of the typical charge. Thus, in addition to the proper standard for scrutinizing installation and monthly maintenance of AO equipment, the Commission needs to address the appropriate standard for the service aspect of AOs.

The service component of AOs is governed by Sections 623(b)(1), (2) of the Act regarding rate regulation of cable programming services generally. As was discussed supra, the type of regulation of the AO service component would depend on the level of service being provided to the particular AO. Such service level could, of course, vary even within a single home, where it is not uncommon, for example, to have the initial drop in the living room receive a full array of tiered service, but the AOs in the bedrooms receive only basic service. Moreover, depending, of course, on the level of service provided, each AO is just as valuable as the first set, two residents of the same household can view different programming simultaneously. Thus, a cable AO is far different from an extension telephone, which only

allows one conversation (unless the telephone subscriber pays for additional lines). Accordingly, the rate for AO of basic service should be deemed reasonable so long as it does not exceed the monthly charge allowed for basic service to the first set.

The Notice concludes that it was Congress' intent to unbundle basic service from basic equipment.[193] However, the Commission takes this intent a step further, "tentatively conclud[ing] that, to be consistent with the statute's intent, the rates for installation should not be bundled with rates for the lease of equipment."[194] As explained above, there is no similar Congressional intent to prohibit bundling of related equipment.[195] Indeed, the 1992 Cable Act deals with equipment used to receive basic service in the same sentence and applies the same test.[196]

The Commission's sole rationale is "that this unbundling could help to establish an environment in which a competitive market for equipment and installation may develop.[197] There is

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[193]Id. at ¶ 63.

[194]Id.

[195]Similarly, nothing in the 1992 Cable Act prohibits the bundling of tiers of "cable programming service" with the equipment used to provide such service. See 47 U.S.C. § 543(1)(2). Thus, for example, if a cable operator reduces the rate for non-basic equipment to comply with the applicable benchmark, the operator should be allowed immediately to raise the rate of any of its non-basic services that are priced below the benchmark.

[196]47 U.S.C. § 543(b)(3).

[197]Id.

no evidence, however, that a competitive market for equipment and installation would be hindered by permitting cable operators to bundle equipment and installation rates. For example, a stroll down the aisle of Radio Shack or other electronics retailers demonstrates that a thriving market for many different types of equipment, including A/B switches and remote control units, already exists. There is no reason to believe that such market, including installations, will not continue to develop. If bundling of equipment were prohibited, on the other hand, cable operators would face an unnecessary intrusion into their business practices.

Even if "bundling" of basic service and basic equipment were prohibited, the Commission should, at the very least, allow cable operators to establish their own rates for basic equipment, installation, service calls, and AOs, so long as such rates remain within a reasonable rate "basket."[198] Such an approach would allow the great majority of cable operators, who charge less than cost for installations and service calls, to recover those costs as part of the monthly rates for converters, remotes, or AOs. Consumers certainly would not be disadvantaged, because they would naturally be concerned chiefly that the amount of their monthly bill is reasonable, regardless of a change in

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[198]The Commission touches upon this issue in the Notice, asking, for instance, "whether the actual cost provision of the statute is contravened if individual promotions do not fully recover costs as long as provision of equipment in general does recover 'actual costs.'" Notice at ¶ 70.

allocation of costs among various elements of the bill. Moreover, a basket approach for equipment actually benefits consumers, since it does not foreclose cable service to members of the public who would decline service if a huge up front payment for each component of equipment, including installation, had to be priced at cost.

In applying a "basket" analysis, all basic equipment rates would be deemed reasonable so long as aggregate basic equipment revenues do not exceed the cable operator's basic equipment revenue requirement for the year. The cable operator's revenue requirement might be based on the following formula:

(1) hourly local telco rate for installations and service calls times hours expended during the year by cable operator on installations and service calls; plus

(2) the annual fully allocated maintenance cost of converters and remotes; plus

(3) the price of equipment, i.e., the fully allocated cost of converters and remotes placed in service during the year minus the salvage value (if any) of converters and remotes retired during the year;[199] plus

(4) a reasonable profit.

As long as the cable operator's total basic equipment revenue was within the limits of this formula, its individual equipment rates would be deemed reasonable.

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[199]See id. at n.95.

If the Commission fails to employ a "basket" analysis of overall basic equipment revenues, cable operators could suffer significant declines in cash flow, which in turn, could adversely affect their ability to continue to invest in improved programming, better customer service, and advanced technology. Thus, for example, if a cable operator's basic equipment rates are forced down to meet the Commission's benchmark, at a very minimum the operator ought to be able to recover lost revenues through the ability to raise other rates which may be below the applicable benchmark. This should still be the case even in the face of a "price cap,"[200] which might otherwise restrict such increases.

E. Costs Of Franchise Requirements And Subscriber Bill Itemization.

Section 623(b)(2) of the Act expressly requires that the Commission's basic rate formula, among other things, must account for costs related to PEG access channels,[201] other franchise obligations, franchise fees, and the direct costs of basic level programming (including, e.g., retransmission consent payments).[202] Section 622(c) of the Act expressly authorizes cable operators to itemize on subscriber bills the amount (1) of

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[200]See id. at ¶¶ 49-52.

[201]The Commission's rate regulations must include standards to identify such costs. 47 U.S.C. § 542(b)(4).

[202]Id. at § 542(b)(2); see also id. at § 325(b)(3)(A) (Commission required to account for impact of retransmission consent payments on basic rates).

the total bill assessed as a franchise fee (and the identity of the franchising authority), (2) of the total bill assessed to satisfy any franchising authority imposed PEG access requirements, and (3) "of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."[203] In order to implement these related provisions, the Commission seeks comment on the interrelationship between the two sections.[204]

The legislative history to Section 623(b)(4) indicates that, at least as it pertains to basic rates, Congress' goal was "to help keep the rates for basic cable service low."[205] Although there is little other legislative history regarding these provisions, we believe there are two fundamental reasons why Congress provided for such itemization: (1) to provide fairness to cable operators, allowing them, for example, not to be prejudiced under any benchmark approach by costs that directly result from governmental cost increases, and (2) to facilitate the scrutiny of complete cable rate information by subscribers, so that the subscribers can make informed decisions as to the basis of cable rates and increases and otherwise hidden government taxes and levies.

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[203]Id. at § 542(c).

[204]Notice at ¶ 175.

[205]Conf. Report at 63.

One beneficial result of itemizing the foregoing cost categories is that they would not have to be included in determining benchmark rates, thereby promoting the goal of reducing the burdens on franchising authorities, cable operators and the Commission.[206] Thus, the most efficient way for the Commission to implement Sections 622(c) and 623 in a consistent manner is to allow all of the foregoing costs to be itemized as separate charges over and above the basic rate authorized by the Commission's benchmarks. The formula will then not have to deal with such costs. Take, for example, two cable operators having systems of similar size, age, location, and configuration. Their net basic service rates (excluding franchise and government related costs) might well be the same applying the applicable benchmarks to be devised by the Commission. However, assume one cable system pays a five percent franchise fee and is subject to other onerous franchise or government related costs while the other is not. Obviously, these two systems should not be grouped together for purposes of establishing benchmark rates, unless only rates net of (i.e., excluding) such government costs are compared.

Similarly, take two cable communities served by the same headend, but whose franchising authorities impose the differing assessments as in the example above. Even without regard to

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[206] See 47 U.S.C. § 543(b)(2)(A).

whether the 1992 Cable Act's requirement of uniform rates[207] might be applied on a system-wide as opposed to a franchise area basis, the cable operator nevertheless has incentives (including administrative ease in billing and marketing, etc.) to charge the same net rate to all of the system's subscribers. However, it is unfair to certain subscribers to require the same gross amount to be charged in each franchise area throughout the system. The result of such a requirement would be that subscribers in communities with lower government costs would be subsidizing those subscribers in communities with higher government costs. If such costs are itemized and removed from the benchmark analysis, however, the cable operator would be able to charge the same net rate throughout the system, each community could judge the rate for purposes of meeting the basic rate benchmark, and subscribers with higher total bills would know that government assessments on the cable operator account for that differential.

Once the costs and assessments to be itemized are identified, they must be "reasonably and properly" allocated among the various levels of service.[208] Franchise fees are readily allocable, since they are calculated as a percentage of revenue. Thus, a larger amount will automatically be allocated to expanded tier customers than to basic-only customers. However, since the basic service level must include both PEG

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[207] Id. at § 543(d).

[208] Id. at § 543(b)(2)(C)(v).

access channels[209] and stations for which any retransmission fees might have to be paid,[210] the proportionate amount of these charges should be added to the bill of every subscriber since all subscribers receive basic.

Although the 1992 Cable Act requires the Commission to identify certain cable operator costs to be itemized, the Commission's proposed cost allocation and uniform accounting standards to identify costs and revenues[211] are far too complex and burdensome. Accordingly, such proposed rules would frustrate the 1992 Cable Act's directive to reduce administrative burdens on the concerned parties, including the Commission. Instead, the Commission should rely on the assumption of good faith allocation by cable operators, consistent with generally accepted accounting principles. As a further safeguard, the Commission could impose accounting procedures on cable operators found to have intentionally imposed improper pass-throughs.

The Commission must also make clear that the identification on the subscriber bill in the form of a "separate line item" is

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[209]See id. at § 543(b)(7)(A)(ii) ("[s]uch basic service tier shall, at a minimum, consist of the following: (ii) [a]ny public, educational, and governmental access programming required by the franchise to be provided to subscribers").

[210]Id. at § 543(b)(7)(A)(i)("[s]uch basic service tier shall, at a minimum, consist of the following: (i) [a]ll signals carried in fulfillment of the [must-carry] requirements of sections 614 and 615"); Pub. L. No. 102-385, 106 Stat. 1460, § 6 (generally requiring retransmission consent for the carriage of commercial broadcast stations).

[211]Notice at Appendix A.

authorized by the express language of the 1992 Cable Act. The authority to itemize such amounts as a "separate line item" obviously allows more than hiding an explanation in a footnote buried in fine print at the bottom of the bill, as some franchise authorities have demanded.[212] Rather, the ability to disclose by line item means a separate line for each relevant government cost immediately below the cable operator's net service rate. Such pass-throughs should be added on below the line to allow the actual (net) basic rate to be uniform among multiple communities served from the same headend, even if franchise-related costs differ. Only if itemized costs are displayed clearly among the separate charges, which are then added to arrive at the total amount due, can Congressional intent be realized for the subscriber to be shown the amount of the "total bill" that such assessments impose. This approach will allow a subscriber to see

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[212]The Commission should in no way feel bound by the somewhat ambiguous discussion of itemization in the House Report which, in contravention of the express statutory language, appears to essentially prohibit itemization. See House Report at 86 (itemization provision prohibits the cable operator from itemizing $1.50 allocable to the franchise fee as a separate line item from a $28.50 net service rate on a $30 total cable bill, instead only permitting the cable operator "to include in a legend a statement that the $30 basic cable service rate includes a five percent franchise fee, which amounts to $1.50"). Not only is this language at odds with the plain language of this Act, it relates to the House-passed bill, not the Senate bill whose itemization provision was adopted in conference. Furthermore, such a narrow interpretation of the subscriber itemization provision is in conflict with the principle, upheld by the U.S. Supreme Court, that government attempts to censor the content of customer bills violate the First Amendment. See Pacific Gas & Electric v. P.U.C. of California, 475 U.S. 1 (1986).

graphically, line by line, the true bottom line gross amount that is billed.

As a policy matter, in determining the scope of itemized government costs, the Commission should further Congress' intent to keep basic cable rates "reasonable"[213] and, in particular, to restrain the imposition of costs on the cable customer which the cable operator has absolutely no means to control.[214] Specifically, full itemization of the costs described above could provide incentives for franchising authorities to refrain from imposing unreasonable or excessive assessments upon prospective new cable operators or incumbent cable operators seeking franchise renewals. As thousands of communities undertake the franchise renewal process in the next several years, it is particularly crucial that government officials, flush with the euphoria of new regulatory opportunities, understand that ever higher costs and assessments demanded of cable operators will not be allowed to go unnoticed. It will be of course impossible to achieve Congress' goal of "reasonable" basic cable rates if local governments, whose assessments upon cable operators make up a

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[213]47 U.S.C. § 543(b)(1).

[214]See id. at § 543(c)(1); Conf. Report at 63.

sizeable portion of such rates,[215] can maintain the status quo by preventing full disclosure of new or higher charges.

However, the Commission has no authority to directly order local governments to be reasonable in imposing such assessments. The most effective check on local governments is public scrutiny. The public cannot exercise such scrutiny over cable related assessments unless it has the full facts, including the breakdown of the individual charges and amounts that make up cable service bills. The only efficient way to provide such information to the public is by allowing cable operators to clearly itemize such heretofore hidden assessments directly on the bills sent to cable subscribers, as Congress has obviously intended to authorize.

F. Implementation And Enforcement.

The Commission seeks comment on the procedures and standards to be adopted for the purpose of implementing and enforcing basic cable service rate regulation.[216] According to Section 623(b)(5)(A), cable operators have been designated to "implement," and franchising authorities to "enforce" rate regulations established by the Commission. Under this scheme, cable operators propose to their franchising authorities basic service rate increases that they believe are consistent with the

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[215]In a 1984 study, National Economic Research Associates, Inc. found that franchise requirements (such as franchise fees, community endowments, etc.) add up to $927 to each subscriber's bill over the course of the franchise term. William B. Shew, Costs of Cable Television Franchise Requirements, Feb. 14, 1984, at 14, 20.

[216]See Notice at ¶¶ 79-89.

Commission's standards. Nashoba asserts that a basic rate increase proposal, that the cable operator believes to be reasonable, should be implemented immediately after thirty days' notice to the franchising authority and, if required by the franchise, to the subscribers.[217] A rule that would permit the franchising authority to defer implementation of a proposed basic rate increase based on compliance with information requests, such as those suggested in paragraphs 83 and 85 of the Notice, would result in such an endless demand for information that the franchising authority would be able to claim that the cable operator has not satisfied the demand. Nashoba contends that thirty days' notice is more than an adequate amount of time for a franchising authority to review a proposed rate increase. Thirty days is the same amount of time that Congress provided for the Commission's review of certifications filed by franchising authorities.[218] Accordingly, the thirty-day time period should apply to rate increase requests as well. Such a scheme is inconsistent with Congress' goal of expediency and minimizing the burdens in ratemaking procedures.[219]

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[217]See 47 U.S.C. § 543(b)(6); Notice at ¶¶ 79, 81. Nashoba submits that the thirty-day notice provision in the 1992 Cable Act preempts any longer notice provisions contained in a franchise. Thus, franchise provisions that require operators to give more than thirty days' notice of rate increases, either to the franchising authority or to subscribers, are unenforceable.

[218]See 47 U.S.C. § 543(a)(4).

[219]See, e.g., id. at § 543(b)(5); Notice at ¶¶ 84-85.